IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR.

O R D E R

D.B.CIVIL SPECIAL APPEAL NO. 1400/2006

M/s Prahlad Narain Contractor
v.
State of Rajasthan & ors.

Date of order : 27.02.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri R.K.Mathur for the appellant

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the award of maintenance contract to respondent no.3, M/s Acme Enterprises, and for direction to award the contract exclusively to it.

Brief facts of the case are that on 6.2.2006 tenders were invited for executing *safai* and maintenance works in the Secretariat premises during 2006-07 from contractors/institutions having at least three years' experience of *safai*/maintenance work worth atleast Rs. 15 lacs in large buildings of

government, corporations or other registered trusts/institutions. The appellant and another submitted their tenders. On 10.3.2006 technical bids were opened but the technical committee rejected the tenders and fresh tenders were invited on 31.3.2006. In the said tender notice the condition that the tenderer should have work experience of Rs. 15 lacs was modified and those having experience worth Rs. 7 lacs were allowed to bid. Three tenders on behalf of the appellant, M/s Prahari Detective Company and the respondent M/s Acme Enterprises were received this time. On consideration of the offers, finally, contract was awarded to respondent no.3. The case of the appellant is that the second tender notice was identical and there was therefore no justification to invite fresh tenders after rejecting the tender submitted by the appellant which was in order. According to the appellant, fresh tender was invited to cause undue benefit to respondent no.3.

We may mention here that the contract was awarded for the period from 22.5.2006 to 21.5.2007, out of which over nine months have already expired. Less than three months remain. However, we do not wish to non-suit the appellant on the ground that major part of the period has expired. The contention that both the notices were identical is based on misreading of the notices. As seen above, as per the previous tender notice, applicant having work experience of more than Rs. 15 lacs a year during last three

years were eligible to apply; as per second tender notice, the eligibility was reduced to Rs. 7 lacs a year. In their reply the respondents took a definite stand that the criterion was reduced because on account of requirement of experience of Rs. 15 lacs as per the previous notice, only two firms had submitted bids and the eligibility was modified so that persons having work experience of lesser value may also participate in the tender process. In other words, the condition was modified to enlarge the zone of tender process. The appellant therefore, can not contend that second tender notice was identical and fresh tenders were invited only to benefit the respondent.

The point for consideration is whether and to what extent this Court can interfere with the administrative decisions in the matter of award of contract. In Tata Cellular v. Union of India, (1994) 6 SCC 651, the Supreme Court on survey of case law on the point held that the High Court does not sit as the Court of appeal, it merely reviews the manner in which the decision is taken. The Court does not have the expertise to correct the administrative decisions and in this manner the Court cannot substitute its own decision in place of the decision of the executive authorities. The Supreme Court emphasised that the Government must have freedom of contract and allow fair play in the joints. In sum, the Court should be loathe to interfere with the tender process.

The appellant having participated in the second tender process can not challenge the rejection of its first tender. The Government apparently considered the pros and cons of the respective offers submitted by three tenderers and upon inter se consideration thereof contract was awarded to the respondent. We do not find any error in the manner of award of contract to the respondent and it would be difficult to interfere with the decision as if sitting in appeal. In the circumstances we do not find any error in the order of the learned Single Judge dismissing the writ petition.

The appeal is dismissed.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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